

No. 82-1325  
IN THE  
**Supreme Court of the United States**

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October Term, 1982

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I.A.M. NATIONAL PENSION FUND,

*Petitioner,*

vs.

MADGE H. ELSE and MARGARET E. THOMAS, individually  
and on behalf of all others similarly situated,

*Respondents.*

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**BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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Respondents, MADGE H. ELSE and MARGARET E. THOMAS, individually and on behalf of all others similarly situated, pray that the Petition for Writ of Certiorari to review the judgment of the Court of Appeals for the Ninth Circuit be denied.

**STATUTES INVOLVED**

In addition to the statutes cited and quoted by the Petitioner, the Respondents believe that the following additional provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §1000 *et seq.*, are pertinent.

Section 2(a) of ERISA, 29 U.S.C. §1001(a), provides in part:

“The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; . . . that despite the enormous growth in such plans *many employees with long years of employment are losing anticipated retirement benefits* owing to the lack of vesting provisions in such plans; . . . and that it is therefore desirable in the interests of employees and their beneficiaries . . . *that minimum standards be provided assuring the equitable character of such plans* and their financial soundness.”

Section 2(b) of ERISA, 29 U.S.C. §1001(b), further states:

“It is hereby declared to be the policy of this Act to protect . . . the interest of participants in employee benefit plans and their beneficiaries, . . . *by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans* . . . .”

And lastly, Section 2(c) of ERISA, 29 U.S.C. §1001(c), announces:

“*It is hereby further declared to be the policy of this Act to protect . . . the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service* . . . .”

Section 203(c)(1)(B) of ERISA, 29 U.S.C. §1053(c)(1)(B), states:

“A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after adoption of

such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.”

## **STATEMENT OF THE CASE**

### **A. Statement of Facts.**

In its Petition for Writ of Certiorari, the Petitioner does not set forth a statement of facts. Rather, throughout the Petition, it selectively emphasizes certain factual contentions, some of which are either erroneous or not set forth in the Excerpts of the Clerk’s Record.<sup>1</sup>

As a result, the Respondents direct the Court to the relevant facts set forth in the opinion of the United States Court of Appeals for the Ninth Circuit in this case. [See App. 28a-46a to Pet. for Cert.]

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<sup>1</sup>An example of this is the Petitioner’s mistaken assertion that it relied upon ERISA in adopting and implementing its forfeiture provisions in this proceeding. [See pg. 12 of Pet. for Cert.]

## ARGUMENT

### **A. The Circuit Court's Decision Is Correct Without Regard to the Questions Sought to Be Raised by the Petition and It Turns Upon Its Own Set of Unique Facts and Circumstances.**

As noted by the Petitioner,<sup>2</sup> besides determining that the forfeiture provisions were arbitrary and capricious on their face and as applied under the particular facts and circumstances of this case, the district court concluded that the Petitioner's conduct violated both Section 404(c)(1) of ERISA, 29 U.S.C. §1104(a)(1), and Section 302(c)(5) of the Labor-Management Relations Act of 1947, 29 U.S.C. §186(c)(5) ("LMRA"), on the separate but related ground that a reasonable justification did not exist for the adoption and application of the forfeiture provisions which resulted in a sizeable number of previously vested individuals becoming divested for pension purposes.

Additionally, the district court found that class member Madge Elser and those others similarly situated did not receive adequate and sufficient notice of the forfeiture requirements and thus were not afforded a reasonable opportunity to insulate themselves from the harsh impact upon application.

In affirming the district court's holding that the Petitioner's adoption and application of the forfeiture provisions were arbitrary and capricious and constituted violations of both the LMRA and ERISA, the circuit court did not address the other two (2) separate and distinct grounds the district

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<sup>2</sup>Pg. 10, n. 10 of Pet. for Cert.

court relied upon in ruling for the Respondents. [See App. 46a n. 19.]<sup>3</sup>

Additionally, the Petitioner's conduct violated Section 203(c)(1)(B) of ERISA, 29 U.S.C. §1053(c)(1)(B), in that by cancelling the Respondents' past service credit, the Petitioner divested the Respondents of a vested pension without first affording them the statutory 203(c)(1)(B) option.

Thus, the Petitioner not only violated Section 404(a)(1) but Section 203(c)(1)(B) of ERISA as well. *In accord, Fentron Industries v. Nat. Shopmen Pension Fund*, 674 F.2d 1300, 1306 (9th Cir. 1982). [See App. 38a n. 8.]<sup>4</sup>

#### **B. The Circuit Court's Decision Does Not Conflict With This Court's Decision in Robinson.**

The Petitioner suggests that this Court in *Robinson* "unequivocally repudiated" decisions rendered by every circuit court that have concluded that federal courts possess

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<sup>3</sup>The district court concluded that class member Margaret E. Thomas and those similarly situated received adequate notice. That finding was the subject of the Respondents' Cross-Appeal to the circuit court which it similarly did not address.

<sup>4</sup>Like this Court's decision in *United Mine Workers of America Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982), the *Fentron* decision, pursuant to Fed.R.App.P. 28(j), was brought to the circuit court's attention after oral argument but before the court rendered its decision.

Although, admittedly, the Respondents did not advocate that any provision of ERISA other than Section 404(a)(1) was violated, the Petitioner similarly did not stress that its actions were lawful under Section 203(b)(1)(C) of ERISA, 29 U.S.C. §1053, or the subsequent statutory regulations interpreting and implementing ERISA's vesting standards which are so heavily relied upon in its Petition to this Court because Part 2 of ERISA governing vesting *did not take effect until January 1, 1976 and therefore did not govern the conduct scrutinized by the circuit court in this proceeding.*

This is further evidenced by the fact that the forfeiture requirements and the method of implementing them were not significantly changed as of January 1, 1975, the date the fiduciary duties provisions of ERISA [Section 404] took effect.

As a result, since *all* the facts which gave rise to this proceeding occurred *prior* to January 1, 1976, the circuit court's holding turns upon its own set of unique facts and will affect few if any litigants other than those involved in this proceeding.

the right under Section 302 of the LMRA to judicially examine trustee discretion and determine whether that discretion has been abused by the adoption or implementation of arbitrary or capricious standards.

On the contrary, this Court in *Robinson* acknowledged that circuit courts have uniformly sat as courts of equity and enforced those fiduciary duties and expressly declined to review that conduct. See 102 S.Ct. at 1233 n. 12. The circuit court, acknowledging this Court's failure to directly address this issue in *Robinson*, similarly declined to reach the issue, relying instead upon the proposition that ERISA "codified the strict fiduciary standards that a §302(c)(5) trustee must meet", citing this court's decision in *N.L.R.B. v. Amax Coal Co.*, 453 U.S. 322, 332 (1981) for that conclusion. [See App. 37a.]

The circuit court concluded, and rightly so, that *Robinson* should not control because *Robinson* was not confronted with an ERISA violation and the trustee conduct examined in this proceeding was not governed or dictated by a collective bargaining agreement.

Since this case concerns an ERISA claim<sup>5</sup> and the legality of pension forfeiture rules determined initially and exclusively by the trustees of a trust fund, the circuit court harmonized its decision with *Robinson*. It did repudiate or conflict with it, as the Petitioner suggests.

In *Robinson*, this Court, in quoting from one of the sponsors of the floor amendment that eventually became Section 302 of the LMRA, emphasized that the primary purpose of Section 302 is to protect the fiscal rights of the employees

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<sup>5</sup>The decision in *Western Conference of Teamsters Pension Trust Fund v. Music*, \_\_ U.S. \_\_, 74 L.Ed. 2d 48 (1982), vacating and remanding 600 F.2d 400 (9th Cir. 1981), also did not address violations of ERISA. See 660 F.2d 400, 405 n. 13.

since, after all, trust fund contributions “ ‘are in effect compensation to his [the employer’s] employees’ ” and that all that is sought “ ‘is to see to it that the rights of employees in the fund are protected.’ ” 102 S.Ct. at 1232 n. 10.

In affirming the district court, the circuit court found a violation of Section 302 of the LMRA because *the Petitioner was financially penalizing those employees it should be compensating and rewarding those employees it should be penalizing*. The circuit court expressed little difficulty in reaching this result because the Petitioner was granting pensions to employees who had been compensated substantially less than the Respondents. It matters little to the Respondents whether their compensation ends up in the coffers of a greedy employer, corrupt union official or an undeserving fellow employee. The purpose of Section 302 of the LMRA was to hopefully insure that employees would eventually receive their deferred compensation. Irrespective of *who* receives it, the employees who should have received the compensation [a vested pension] and on whose behalf most of the compensation was made, the Respondents, did not receive it. That’s why Section 302 of the LMRA was violated in this proceeding.

**C. The Circuit Court’s Holding Relying Upon ERISA Imposes the Same Substantive Standards That Courts Were Employing Prior to Its Passage Under Section 302 of the LMRA.**

As both the circuit court and this Court in *N.L.R.B. v. Amax Coal Co.*, *supra*, indicated, ERISA’s concern with regulating the administration of trust funds cannot be employed for the proposition that trustee conduct once declared unlawful under Section 302 of the LMRA is now legally permissible under ERISA.

In drafting ERISA, Congress only statutorily pronounced what courts have been specifically requiring of trust funds for many years under Section 302 of the LMRA: that, *under reasonable circumstances*, it is permissible for a trust fund to provide for the forfeiture of past service pension credit. ERISA and the subsequent statutory and administrative regulations implementing it which stand for the notion that a pension plan can specifically provide for the cancellation of past service pension credit upon an employer's cessation of contributions did not add to or delete from the requirements that have always been imposed upon trustees by courts interpreting similar trust provisions in multi-employer plans prior to its passage under Section 302(c) of the LMRA. This aspect of ERISA was old news recycled statutorily since the authority to cancel past service pension credit had always existed under Section 302 of the LMRA *as long as it was reasonable under the circumstances*. Trustee decisions under ERISA, which are only entitled to judicial deference if they are well-founded and not repugnant to ERISA's equitable purposes, do not change that.

Other courts which have examined this have similarly ruled that the "reasonableness" requirement of Section 302 of the LMRA has equal force and effect under ERISA. See e.g., *Baltimore Rebuilders, Inc. v. N.L.R.B.*, 611 F.2d 1372, 1379 and 1380 (4th Cir. 1979), *cert. denied*, 447 U.S. 922 (1980) and *Winpisinger v. Aurora Corp. of Ill.*, etc., 456 F.Supp. 559, 562 n. 4 (N.D. Ohio 1978), where the court announced, relying upon the legislative intent found in Title I of ERISA quoted hereinabove, that a fiduciary under ERISA "is forbidden from granting preference as between a plan's participants or as between a plan's beneficiaries" and that "Congress intended that the fiduciary duties requirements of 404(a)(1) [of ERISA] should be interpreted so that employees with long years of em-

ployment would not lose 'anticipated retirement benefits' when under plans that contain vesting provisions a loss is caused by a fiduciary's preferential treatment of participants or beneficiaries."

The Petitioner has cited no case authority for a contrary conclusion because, quite frankly, none exists.

The circuit court concluded that the forfeiture requirements adopted and implemented by the Petitioner were not consistent with the requirements of Section 302 of the LMRA. Additionally, the court determined that ERISA and its allowance for the *reasonable* cancellation of past service pension credit upon an employer's cessation of contributions not only did not alter that result but statutorily required it.

A contrary conclusion, as advocated by the Petitioner, would not only result in the demise of the arbitrary and capricious standard of review in evaluating trustee conduct under Section 302 of the LMRA and ERISA but even more disturbingly, allow trustees to act whimsically, arbitrarily and capriciously in disbursing pension contributions as long as the compensation is received by *any* participant or beneficiary of the plan without any judicial supervision or intervention whatsoever! Such dire consequences were not contemplated, let alone discussed, by the legislative drafters of ERISA.

As indicated hereinabove, Congress in passing ERISA was concerned with the fact that employees were losing anticipated pension benefits and that trustees, in determining pension eligibility, were not acting as equitably as they should in exercising their fiduciary discretion and responsibilities in that regard. An expressed legislative purpose of ERISA was to statutorily insure that pension eligibility would be determined equitably by requiring that pensions vest after employees have worked a significant period of

time. Contrary to the Petitioner's assertions, the circuit court's holding is consistent with that congressional intent. If anything, ERISA requires that trust funds act *more* reasonably and equitably in making pension eligibility determinations than was legally necessary before its passage.

The circuit court concluded that under the unique facts and circumstances of this case, the fiduciary standards statutorily imposed upon trustees under ERISA were violated. In doing so, the circuit court acted in conformity with Congress' intent that federal courts are judicially responsible for insuring that trustees act reasonably and equitably in making pension eligibility determinations.

#### CONCLUSION.

For the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully submitted,

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